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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1941

Number 1[illegible]6 US #3

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GEORGE BOHNKE and
MRS. HENRY T. (Eloise) BROWN
Petitioners

v.

THE PEOPLE OF THE STATE OF NEW YORK
Respondents

Petition for Writ of Certiorari to the County Court of Suffolk County State of New York

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INDEX

SUBJECT INDEX

	PAGE
Summary Statement of Matters Involved	2
Ordinance No. 28, Village of Southampton	4
Reasons Relied on for Allowance of Writ	7
APPENDIX A	12
BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI	13-32
Opinions of the Courts Below	13
Jurisdiction	13
Statement of the Case (see pages 2 to 7)	14
Specification of Errors	15
Points for Argument	16-17
FIRST—Ordinance No. 28 of the Village of Southampton is unconstitutional and void, both on its face and as construed and applied to petitioners, in that it unreasonably and unlawfully deprives them of freedom to worship ALMIGHTY GOD, Jehovah, and freedom of conscience, of speech, of press, and of assembly, all contrary to Section 1, Fourteenth Amendment to the Federal Constitution	16

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Subject Index

PAGE

SECOND—Ordinance No. 28 of the Village of Southampton is unconstitutional and void on its face and repugnant to Section 1 of the Fourteenth Amendment to the Federal Constitution in that the part of the ordinance prohibiting entry upon property of another without obtaining express prior consent of the occupant is unreasonable, and arbitrarily makes unlawful that which is inherently lawful, and deprives persons of liberties and privileges constitutionally safeguarded against State invasion, without due process of law, and amounts to legislation by individuals in that it vests each householder with the right to determine whether or not the ordinance shall be enforced, all of which is in excess of the police power of the village conferred by statutes of the State of New York 16

THIRD—Ordinance No. 28 of the Village of Southampton is unconstitutional and repugnant to the "equal protection" clause of the Fourteenth Amendment to the Federal Constitution, in that it is unjustly discriminatory and imposes an improper classification predicated upon residence of six months in the village as a condition precedent to the exercise of rights guaranteed and secured by the United States Constitution 17

ARGUMENT 17-32

Conclusion 32

Cases Cited

	PAGE
Cantwell v. Connecticut 310 U. S. 296	10, 28
Carlson v. California 310 U. S. 106	28
Columbia (S. Car.) v. Alexander 119 S. E. 241	9
Concordia Fire Ins. Co. v. Illinois 292 U. S. 535, 545	29
Cudahy Packing Co. v. McBride 92 F. 2d 737 (CCA-Neb.)	20
De Berry v. City of La Grange 8 S. E. 2d 146	9, 18
Donley et al. v. City of Colorado Springs 40 F. Supp. 15	8, 30, 31
Green River, Town of, (Wyo.) v. Fuller Brush Co. 65 F. 2d 112	17, 29, 30, 31
Hague v. C. I. O. 101 F. 2d 774; 307 U. S. 496	9, 25
Jewel Tea Co. v. Bel Air 172 Md. 536	9, 17
Jewel Tea Co. v. City of Geneva, Nebr. 291 N. W. 664	9
Lovell v. City of Griffin 303 U. S. 444	10, 23, 28
Maynard, Ex parte 275 S. W. 1071	9, 24
McAlester, City of, v. Grand Union Tea Co. 98 P. 2d 924	9, 18
McKee v. Gratz 260 U. S. 127	20
Meiers v. Koch's Brewery 229 N. Y. 10, 12-14	19
New Jersey Good Humor, Inc. v. Board of Comm'rs 11 A. 2d 113, 114	9

Cases Cited

	PAGE
Orangeburg (S. Car.) v. Farmer 181 S. C. 143	8, 17
Prior v. White 180 So. 347	9, 18
Real Silk Hosiery Mills v. City of Richmond, Calif. 298 F. 126	9
Schneider v. State 120 N. J. L. 460; 121 N. J. L. 542 308 U. S. 147	10, 22, 28, 29
Stacy v. Shapiro 212 App. Div. 723; 209 N. Y. S. 305	20
Thornhill v. Alabama 310 U. S. 88	28
Truax v. Corrigan 257 U. S. 312, 331-333	10, 26
White v. Town of Culpeper 172 Va. 630	9, 18
Zimmermann et al. v. London (Ohio) 38 F. Supp. 582	8, 31

Statutes Cited

Southampton (N. Y.) Village ordinance No. 28	4
28 U. S. C. A. 344 (b) [Judicial Code, sec. 237 (b)]	13
United States Constitution Amendment XIV, Section 1	15, 16, 17, 25

Miscellaneous Citations

33 American Jurisprudence 401, par. 94	20
BIBLE	
Matthew 7: 10, 12-14	10
Acts 20: 20	10
37 Corpus Juris 283	20
63 Corpus Juris, par. 325, pp. 1086-1087, n. 25	20
Restatement of the Law of Torts, Vol. 1, pp. 402-3	20

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Petition for Writ of Certiorari to the County Court of Suffolk County State of New York

To the SUPREME COURT OF THE UNITED STATES OF AMERICA:

Your petitioners, George Bohnke and Mrs. Henry T. (Eloise) Brown, present this petition for writ of certiorari to the County Court of Suffolk County, State of New York, to review a judgment on the remittitur and opinion of the New York Court of Appeals affirming judgments of conviction of your petitioners, and as grounds therefor say:

A

Summary Statement of Matters Involved

1. *Statement of Facts.*

The facts in this case are simple and undisputed, showing:

That petitioners George Bohnke and Mrs. Henry T. (Eloise) Brown were and are Jehovah's witnesses (R. 45), and as such each is an ordained minister of Jehovah God. (R. 57) Each was and is an accredited representative of the Watchtower Bible and Tract Society (R. 46), a New York corporation organized under the Membership Corporations Law, engaged in benevolent work for the moral and mental improvement of men and women by dissemination among them of Bible truths in various languages in printed form. Such distribution of literature is from house to house and is the method employed by petitioners and thousands of other of Jehovah's witnesses throughout the entire United States, as their major way of preaching the gospel of God's Kingdom. R. 48.

On June 30, 1940, petitioners and other of Jehovah's witnesses went from house to house quietly (R. 49), without disturbing the householder, without knocking at any door or ringing any doorbell, and silently placing at the door of each home a leaflet entitled "Dividing the People", containing information and opinion, which leaflet was introduced in evidence as an exhibit. (R. 49) It was free and no contributions were sought.

The leaflet shows how, in the spring of 1940, mob violence against Jehovah's witnesses flared suddenly throughout the entire land on a scale unprecedented, resulting in the destruction of property and untold injury to thousands of harmless and innocent men, women and children.

In further proof of their innocence in this mob violence, the leaflet quotes from the broadcast speech of the then

Solicitor General of the United States, Francis Biddle, given June 16, 1940, over the coast-to-coast network of the National Broadcasting Company, as follows:

> "Jehovah's witnesses have been repeatedly set upon and beaten. They had committed no crime; but the mob adjudged they had, and meted out mob punishment. The Attorney General has ordered an immediate investigation of these outrages. There is no cause for mass hysteria, nor justification for mob violence. The Department of Justice is well equipped to recognize the real danger spots and to deal with them vigorously."

R. 49; Exhibit 3.

The distribution of this leaflet in Southampton was for the obvious purpose of putting the truth on the subject before each person, showing Jehovah's witnesses are innocent in the matter and so as to remove prejudice against them resulting from misinformation as to the cause of that mob violence.

While the evidence shows that Bohnke and Brown did not have express prior consent of any householder before entering the premises, yet the evidence does show that they were invitees by implication and "licensees" going quietly from house to house in an orderly and proper way, under the circumstances. They were not trespassers. Such precaution against disturbing was occasioned by the distribution at daybreak.

This distribution of said leaflet thus done was part of a nation-wide distribution simultaneously carried out in the same manner under direction of the aforesaid Society, *in the interest of the public.*

The above facts were developed in the evidence before the Court of Special Sessions, Village of Southampton, at the trial of petitioners under informations charging a violation of a village ordinance. (R. 20-59) The informations were filed June 30, 1940. R. 14-16.

Petitioners were convicted (R. 59) and duly appealed to the County Court of Suffolk County. (R. 62-68) On March 4, 1941, the county judge rendered an order affirming the judgments of conviction (R. 75) and filed his decision and opinion overruling petitioners' contentions. R. 69.

Within the time and manner required by law the petitioners presented their application for leave to appeal to the Court of Appeals of the State of New York, pursuant to Article 520 of the Code of Criminal Procedure, to the Chief Judge, Irving Lehman. (R. 6-13) On June 2, 1941, said judge duly signed a certificate allowing appeal to the Court of Appeals. R. 3-4.

Thereafter the matter was brought on for regular hearing and argument in the New York Court of Appeals, and on December 4, 1941, that court rendered an order affirming the judgments of the County Court of Suffolk County, New York, and the Court of Special Sessions of the Village of Southampton, New York (R. 82), and on December 4, 1941, said Court of Appeals filed its per curiam opinion giving reasons for decision. R. 80. Appendix A, p. 12, *infra.*

2. *Statute here drawn in question.*

The legislation here drawn in question is an ordinance of the Village of Southampton, New York, to wit, Village Ordinance No. 28, which reads as follows:

"SOLICITORS, ETC., ON PRIVATE PROPERTY

"No person shall enter upon any private residential property in the Village of Southampton, Suffolk County, New York, for the purpose of vending, peddling, or soliciting orders for any merchandise, device, book, periodical or printed matter whatsoever; nor for the purpose of soliciting alms, or a subscription or a contribution to any church, charitable or public institution whatsoever; nor for the purpose of distributing any handbill, pamphlet, tract, notice or advertising matter, nor for the purpose of selling or distributing

any ticket or chance whatsoever, without the consent of the occupant of said premises previously given.

"Nothing herein contained shall be construed to apply to any person who has been a bona fide resident of the Village of Southampton, New York, for a period of at least six (6) consecutive months last past, nor to any person who has maintained a place of business in the Village of Southampton for a period of at least six (6) consecutive months, prior thereto, or his duly authorized representative. Any person violating this ordinance shall be subject to a penalty of not more than One Hundred ($100.00) Dollars for each violation thereof.

"Any violation of this ordinance shall constitute disorderly conduct, and the person violating the same shall be a disorderly person."

The ordinance appears in the record at pages 17, 69-70.

3. *Substantial Federal Questions Presented.*

By motion to dismiss filed in the Court of Special Sessions of the Village of Southampton, petitioners raised the federal questions here presented, asserting that the ordinance, both on its face and as construed and applied to petitioners, is unconstitutional and void in that it

a) unreasonably and unlawfully deprives petitioners of freedom to worship ALMIGHTY GOD Jehovah, and freedom of conscience, of speech, of press, and of assembly, all contrary to Section 1, Fourteenth Amendment to the Federal Constitution; and

b) unreasonably and arbitrarily makes unlawful that which is inherently lawful (by prohibiting entry upon property of another without obtaining express prior consent of the occupant), thereby depriving persons of liberties and privileges constitutionally safeguarded against State invasion, without due

process of law, and thereby constituting it legislation by individuals in that it vests each householder with the right to determine whether or not the ordinance shall be enforced, all of which is in excess of the police power of the village conferred by statutes of the State of New York; and

c) unjustly imposes discriminatory and improper classification predicated upon residence of six months in the village as a condition precedent to the exercise of rights guaranteed and secured by the Federal Constitution.

R. 43-45, 59.

The said Court of Special Sessions duly considered and passed upon such Federal questions and specifically held that the ordinance was applicable and that petitioners were not denied their rights under the Federal Constitution. R. 44, 45, 59.

In the petition for appeal presented to the County Court of Suffolk County each of the foregoing Federal questions was raised. (R. 62-68) The County Court of Suffolk County overruled specifically each of the foregoing constitutional questions. (R. 69) In the petition for leave to appeal to the Court of Appeals each of the foregoing Federal questions was urged. (R. 6-13) The New York Court of Appeals passed upon each of said Federal questions or assignments, attacking the validity of the ordinance, and that court held it valid and constitutional, both on its face and as applied, and found that the Fourteenth Amendment to the United States Constitution was not violated. See Opinion, R. ...

The Court of Appeals of the State of New York sustained the conviction of your petitioners and affirmed the judgment of the County Court of Suffolk County and of the trial court by overruling petitioners' aforesaid contentions.

Under the law of the State of New York, when the Court of Appeals renders its judgment and files its opinion in

connection with a case decided by it, the clerk of that court immediately issues a remittitur and returns the entire record on appeal, together with the judgment and opinion of the Court of Appeals, to the court below, which in this case is the County Court of Suffolk County, which procedure has been taken in this cause. (See Appendix A, p. 12, *infra.*) In this case said Court of Appeals does not possess the record and is not the court to which writ of certiorari should be directed, but the County Court of Suffolk County, New York, is the court possessed of the record; therefore the writ is properly directed to that court and to its judgment on the remittitur. R. 83.

B

Reasons Relied on for Allowance of Writ

The questions presented here are of national importance and basically affect the fundamental personal and civil rights of every person domiciled within the United States. The New York Court of Appeals has affirmed a judgment rendered by the County Court of Suffolk County, New York, on a most important Federal question in a way that nullifies the constitutional guarantees and provisions with respect to personal freedom.

The opinions of said courts below have misconstrued opinions of this Court and warped them so as to deprive them of their true meaning for the purpose of amputating petitioners' freedom.

The opinions and decisions of the courts below are in direct conflict with applicable decisions of this Court. The courts below have radically and so far departed from the accepted and usual course of judicial proceedings as to demand an order of this Court halting such extraordinary departure from established principles of liberty and constitutional law. In effect the said opinions and decisions have placed a "foreign amendment" upon the Constitution without "due process".

The undisputed evidence and findings of the courts below show that petitioners were not "trespassers" within the definition of that term, and that they were *licensees*, or implied *invitees*, because of the fact that they were calling at the people's homes, presenting to each householder *by leaving at the door* (without calling or otherwise disturbing the householder) a leaflet relating to a subject in which the distributors (petitioners) and the householders individually had a mutual interest.

There is no evidence that the petitioners were requested to leave the premises and refused to do so. The conviction was based upon the construction of the ordinance by the courts below, requiring express permission of the householder before entry on the premises for the purpose of distributing literature.

The ordinance in question is of the type generally known as the "Green River ordinance", which has been uniformly struck down and held unconstitutional on its face by the higher courts of many states.

Decisions by the courts below are in direct conflict with the opinions of United States District Courts declaring invalid and unconstitutional, as construed and applied to activity such as that of petitioners and other of Jehovah's witnesses, identical ordinances of this "Green River" type. See

Donley et al. v. City of Colorado Springs
40 F. Supp. 15
Zimmermann et al. v. Village of London (Ohio)
38 F. Supp. 582

The decisions of the courts below also are in direct conflict with the following cases:

City of Orangeburg (S. C.) v. Farmer (1936)
181 S. C. 143

Jewel Tea Co. v. Bel Air (1937)
172 Md. 536
Prior v. White (1938)
180 So. 347
White v. Town of Culpeper (1939)
172 Va. 630
City of McAlester v. Grand Union Tea Co. (1940)
98 P. 2d 924
De Berry v. City of La Grange (1940)
8 S. E. 2d 146
City of Columbia (S. C.) v. Alexander (1923)
119 S. E. 241
Real Silk Hosiery Mills v. City of Richmond, Calif. (1924)
298 F. 126
Ex parte Maynard
275 S. W. 1071
New Jersey Good Humor, Inc. v. Board of Comm'rs (1940)
11 A. 2d 113, 114
Jewel Tea Co. v. City of Geneva, Nebr. (1940)
291 N. W. 664
Hague v. C. I. O. (1939)
101 F. 2d 774
307 U. S. 496

In the above cases the courts found that the type of ordinance here involved was also unconstitutional and void *on its face* and even as applied to commercial canvassing and peddling from house to house of ordinary articles of commerce or business, other than literature containing information and opinion, on the principle that the police power did not warrant making unlawful a business which is inherently lawful; and therefore this type of ordinance was held unreasonable; and also on the principle that the implied license extended by law from the householder to any person calling at his home for a lawful purpose could

not be revoked by an ordinance of this type; and also by reason of the fact that this type of ordinance discriminated against non-resident in favor of resident business.

Another reason relied upon for allowance of the writ is the fact that each petitioner is an ordained minister of Almighty God, preaching the gospel of God's kingdom, and as such ministers they do not come within the provisions of the ordinance because they preach by publicly distributing literature from house to house concerning Biblical matters. It cannot be said by anyone, even this Court, that such does not constitute "preaching the gospel". Jesus Christ's apostles each and all taught and preached publicly and from house to house.—Matthew 7:10, 12-14; Acts 20:20.

Therefore, as construed and applied the ordinance deprives petitioners of their right of freedom to worship Almighty God and also freedom of press.

In this connection, this Court has held that the proper and most convenient place for distribution of pamphlets is the home of the individual inhabitant of this land. *Schneider* v. *State*, 308 U. S. 147. Therefore the ordinance as construed and applied is in direct conflict with *Lovell* v. *Griffin*, 303 U. S. 444; *Schneider* v. *State*, supra; *Cantwell* v. *Connecticut*, 310 U. S. 296.

The ordinance also imposes an improper classification, predicated upon residence, which is unreasonable and violates the "equal protection" clause of the Fourteenth Amendment to the Federal Constitution. The ordinance requires six months' residence in the village as a condition precedent to going from door to door for any lawful purpose. Under the ordinance, one must live in the village six months before exercising his prerogative right of freedom of press by distributing literature from house to house. The holding of the courts below in sustaining the validity of this provision is in conflict with *Truax* v. *Corrigan*, 257 U. S. 312, 331-333.

Wherefore your petitioners pray that this Court issue a writ of certiorari to the County Court of Suffolk County, New York, directing such court to certify to this Court for

review and determination on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case as numbered and entitled on the docket of said court; and that the decree of the court be reversed and that your petitioners may have such other and further relief in the premises as to this Court may seem just and proper under the circumstances.

GEORGE BOHNKE
MRS. HENRY T. (Eloise) BROWN
Petitioners

By HAYDEN C. COVINGTON
Attorney for Petitioners